

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA,  
Plaintiff

vs.

Case No. 3:16-cr-30044-MGM-1

ALBERTO MARTE,  
Defendant

\*\*\*\*\*

UNITED STATES OF AMERICA,  
Plaintiff

vs.

Case No. 3:16-cr-30044-MGM-8

JUAN PEREZ,  
Defendant

\*\*\*\*\*

TRANSCRIPT OF EVIDENTIARY HEARING  
BEFORE THE HONORABLE KATHERINE A. ROBERTSON  
AT SPRINGFIELD, MASSACHUSETTS  
ON AUGUST 21, 2018

APPEARANCES:

For the Government:

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I N D E X

Witness:	Direct	Cross	Redirect	Recross
Special Agent John Barron (By Mr. Bongiorno)	8		44 51	
(By Mr. Desroches)		33		50

E X H I B I T S

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None.	

P R O C E E D I N G S

THE CLERK: The matter of the United States of America versus Juan Perez and Alberto Marte, Criminal Case No. 16-30044.

THE COURT: Alright. So I have a motion by -- well, first let me swear in the interpreter.

THE CLERK: Yes, your Honor.

(The Interpreter was sworn.)

THE COURT: So I have a motion on behalf of Mr. Marte to join in -- I assume it's a Motion to Join in Motion No. 521 that was filed on behalf of Mr. Perez. I'm going to grant that motion.

MR. BONGIORNI: Thank you.

THE COURT: I do want to talk to you, Mr. O'Donald, later. We'll have just a brief conversation later.

MR. O'DONALD: Thank you.

THE COURT: So this is an evidentiary hearing at the request of the defendants, Mr. Perez and Mr. Marte, as to the existence or nonexistence of a joint investigation between the government of the Dominican Republic and the DEA. I wanted to raise one other point before we get started.

Let me ask you, Mr. Desroches, I believe that there is a separate motion pending on behalf of Mr. Perez and Mr. Marte, possibly other defendants, concerning the identity of a

1 confidential informant; is that correct?

2 MR. DESROCHES: That is -- well --

3 THE COURT: What is the status of that motion?

4 MR. DESROCHES: Just to be clear, the motion is in  
5 regards to the defendant receiving an unredacted affidavit. So  
6 the defendant asserts that it's related to the identity of a  
7 confidential informant. The Government has filed responses.  
8 But that is pending. We have a status of August 29th before  
9 Judge Mastroianni.

10 THE COURT: Alright. But it has not been ruled on.

11 The only reason I'm raising this is I just would want  
12 the parties to be vigilant. I'm not going to permit any  
13 questions this morning that would -- as long as that motion  
14 remains unresolved and there is this question pending about the  
15 identity of a confidential informant, I don't want questions  
16 posed to any witness today that would have a bearing on the  
17 identity of a confidential informant. I don't think it's  
18 relevant to the question here. So I just would ask that you  
19 both be vigilant in that respect.

20 Is that understood, Mr. Bongiorno?

21 MR. BONGIORNI: It is.

22 THE COURT: You can address it, yeah.

23 MR. BONGIORNI: I do want to -- there are individuals  
24 who are referenced in the affidavit of Agent Barron. Not in  
25 the affidavit that he filed as part of your order, but within

1 the affidavit. I think the Government --

2 THE COURT: Within what affidavit?

3 MR. BONGIORNI: The initial affidavit for the wiretap,  
4 and some of the references make reference to the Dominican  
5 wiretap as well. I think the Government's issue is, the  
6 Government at least is -- and I don't want to speak for  
7 Mr. Desroches, but I think what he's trying to say is the  
8 Government is not prepared to admit or deny that anybody is a  
9 confidential informant at this point, and what we have moved  
10 for before Judge Mastroianni is to be provided with a complete  
11 copy of the application that was provided to him. We've had  
12 two statuses. Judge Mastroianni ordered the Government to file  
13 a redacted version of its response and provide it to me. I  
14 then filed an opposition, and we now have a status with respect  
15 to just that -- I think just that issue, as to whether or not  
16 the Government's redacted submission to me is sufficient for us  
17 to go forward.

18 THE COURT: Is sufficient.

19 Well, so let me put it this way. Let me just say that  
20 to the extent that there are -- if there is a question posed  
21 that causes concern about anybody's safety, so to speak, I just  
22 would want to hear an objection. And to the extent that the  
23 Court need -- you know, that counsel wants to be heard, I could  
24 hear you at sidebar if that was important. But I don't -- you  
25 know, given that we're talking about two affidavits filed by

1 the same agent, the affidavit that was filed in response to my  
2 request for additional information related to the Dominican  
3 wiretap, and an affidavit that was filed in support of the  
4 Title 3 application, I just want to make sure that we don't --

5 MR. BONGIORNI: Overlap.

6 THE COURT: Overlap, yeah.

7 MR. DESROCHES: Yes, your Honor.

8 THE COURT: Okay. So vigilance. Thank you.

9 Alright. So this is the defendant's motion and it's  
10 an evidentiary hearing that we've convened at the defendant's  
11 request.

12 MR. BONGIORNI: Right.

13 THE COURT: So I will let the defendants move forward  
14 and call their witness or witnesses.

15 MR. BONGIORNI: I'm going to call Agent Barron since  
16 he was the author of the affidavit. I'd only ask that if the  
17 Government intends to call any other witnesses, that we have an  
18 agreement with respect to a sequestration.

19 MR. DESROCHES: There's no other witnesses, your  
20 Honor.

21 THE COURT: There are no other witnesses. Alright.  
22 Fine.

23 So Agent Barron.

24 (The Witness was sworn.)

25 (Pause.)

1 MR. BONGIORNI: Are we all set, may I proceed?

2 THE COURT: No, let's wait a minute. Just a minute.

3 MR. BONGIORNI: Wait a minute. Okay.

4 THE COURT: Alright. That's fine. Thank you,  
5 Mr. Bongiorno.

6 MR. BONGIORNI: Thank you.

7 **DIRECT EXAMINATION OF SPECIAL AGENT JOHN BARRON**

8 **BY MR. BONGIORNI:**

9 **Q.** Good morning, Agent Barron.

10 **A.** Good morning, Mr. Bongiorno.

11 **Q.** I want to direct your attention to an affidavit that you  
12 filed in response to the Court's order in this case that is  
13 dated sometime in February of -- February 14, 2018.

14 Do you remember executing that affidavit?

15 **A.** I do.

16 THE COURT: Could I stop you just for a minute and ask  
17 whether either of the parties have a spare copy of that  
18 affidavit. I would --

19 MR. BONGIORNI: I may.

20 THE COURT: We can print one out if we don't have one,  
21 but I did not happen to bring one up to the courtroom with me  
22 and I think it would be helpful.

23 MR. BONGIORNI: I have one right here, Judge, if you'd  
24 like it.

25 THE COURT: Thank you.



1 MR. BONGIORNI: (Inaudible) multiple copies.

2 (Inaudible) do you want me to write on it?

3 THE COURT: No. Thank you. No. Thank you very much.

4 Alright. Go ahead, Mr. Bongiorno. I apologize.

5 MR. BONGIORNI: Sure.

6 BY MR. BONGIORNI:

7 Q. You were asked, were you not, to provide some written  
8 answers to a series of question that the Court had ordered the  
9 Government to respond to?

10 A. Yes, I was.

11 Q. Now, your involvement in the Marte investigation began in  
12 January of 2016?

13 A. That is correct.

14 Q. And the topic that you were providing information on was a  
15 wiretap in the Dominican Republic that took place approximately  
16 some eight or nine months before you became involved in this  
17 investigation?

18 A. I believe it was about a year, yes.

19 Q. So the wiretap that you were asked to make comments about  
20 took place or began about a year prior to your executing -- to  
21 your becoming involved with the Marte investigation; is that  
22 fair to say?

23 A. Yes, sir.

24 Q. Your involvement in the Marte investigation, was that a  
25 referral from another department or another resident office

1 within DEA?

2 **A.** It was a little bit of both. It was a little bit of  
3 information that I gathered here on my own and then a little  
4 bit of information that came from another office.

5 **Q.** And at some time in January, did you receive information  
6 from the field district in New York?

7 **A.** I did.

8 **Q.** Did that information include the existence of the  
9 Dominican wiretap, in other words, when you got the information  
10 in January, did whoever provided you with that information, and  
11 I presume it was a DEA agent in New York?

12 **A.** It was.

13 **Q.** Were you provided information about the existence of the  
14 Dominican wiretap?

15 **A.** At that time, I was not.

16 **Q.** So when would you say it was that you first learned about  
17 the Dominican wiretap?

18 **A.** It would be an estimation, but I would think several weeks  
19 to a month into my investigation.

20 **Q.** You authored an affidavit in this case as part of a  
21 Title 3 order that was dated on April 15th of 2016, is that  
22 correct, in terms of the chronology?

23 **A.** I thought the date was a little later in April, but around  
24 the middle of April, yes.

25 **Q.** Would you agree with me just generally that that affidavit

1 in support of the T3 order references the Dominican wiretap?

2 **A.** It does.

3 **Q.** So you would have learned about the Dominican wiretap  
4 sometime between being first alerted by the New York Field  
5 Office in January 2016 and the date in April when you authored  
6 the wiretap?

7 MR. DESROCHES: Objection, your Honor, to the form of  
8 the questioning. I believe these have all been leading  
9 questions and it is his witness.

10 THE COURT: It is his witness. It's an evidentiary  
11 hearing, it's not a trial. I think I'm going to permit leading  
12 questions.

13 MR. BONGIORNI: I'm trying to make it go quickly. I  
14 know Mr. Desroches would like to see this stretch out for  
15 hours, but I'm going to try to get to the point.

16 THE COURT: No. I'm going to permit some leading  
17 questions.

18 If you think that there's a misrepresentation here, if  
19 you think it's in some form --

20 MR. DESROCHES: Yes, your Honor.

21 THE COURT: I will listen to that objection.

22 Go ahead, Mr. Bongiorno.

23 BY MR. BONGIORNI:

24 **Q.** So the time period that I just referenced for you, the  
25 time period you first learned about the Dominican wiretap, was

1       sometime between January of 2016 and April of 2016?

2       **A.**     That's correct.

3       **Q.**     Did you attend a meeting in March of 2016 with agents from  
4       the Special Operations Division and the New York, Puerto Rico  
5       and New England Field Offices?

6       **A.**     Yes.

7       **Q.**     Would that have been -- that would have been in the month  
8       of March?

9       **A.**     I believe so.

10      **Q.**     So did the individuals who were present at that meeting,  
11      were they known to you?

12      **A.**     Some were and some were not.

13      **Q.**     Was the topic of the Dominican wiretap discussed during  
14      that meeting?

15      **A.**     I don't recall.

16      **Q.**     When you came to prepare your affidavit, the affidavit in  
17      response to the Court's order to address certain issues, the  
18      affidavit that was authored in 2018, did you personally  
19      communicate with any of the individuals who were at that March  
20      meeting with respect to how you were going to answer the  
21      questions that the Court was ordering the Government to answer?

22      **A.**     Yes, I did.

23      **Q.**     Who did you speak with in that regard?

24      **A.**     My first call was to my Division Counsel, Cara Krysil.  
25      She was not at that meeting. She agreed to handle a certain

1 part of the, what I would call investigation into the questions  
2 that were posed by the Court. My first call went to Special  
3 Agent Manuel Rego out of New York, who is the lead investigator  
4 of the New York investigation. My second call went to -- she's  
5 now a group supervisor, but she was a special agent in the  
6 Dominican Republic at the time, Special Agent Roxana Pulido.

7 **Q.** Let me see if I can make sure I understand.

8 You made three phone calls, some of whom were to  
9 people at the meeting in March?

10 **A.** Two of which.

11 **Q.** Two of which, and that would have been the resident agent  
12 in the country office --

13 **A.** Roxana Pulido.

14 **Q.** -- in Santo Domingo, and the other one would have been to  
15 the case agent in the New York Field Office?

16 **A.** The lead investigator out in New York, yes, Manuel Rego.

17 **Q.** To your knowledge, the other individual you met, you  
18 mentioned, was your lead counsel?

19 **A.** Correct.

20 **Q.** So that was an attorney that represents the DEA with  
21 respect to issues that might arise like this?

22 **A.** Correct.

23 **Q.** To your knowledge, did you request that she question  
24 anybody in the Special Operations Division?

25 **A.** Yes.

1     **Q.**    Do you know who that was that she questioned, and I'm just  
2     looking for a yes or no?

3     **A.**    The last name is McGovern, I believe the first name is  
4     Robert.  He's an attorney with the Special Operations Division.

5     **Q.**    So an attorney for the DEA spoke to an attorney for the  
6     Special Operations Division?

7     **A.**    Correct.

8     **Q.**    Now, the Special Operations Division provides  
9     investigative leads and intelligence?

10    **A.**    The Special Operations Division primarily disseminates  
11    information between offices and deconflicts between offices.  
12    If I have an investigation here, they have an investigation  
13    there, Special Operations primarily acts as a liaison between  
14    the two offices.

15    **Q.**    Well, the Special Operations were at least involved in  
16    this case, correct?

17    **A.**    Yes.

18    **Q.**    And the target, if you will, or one of the main targets of  
19    the wiretap here, was a gentleman by the name of Sergio Gomez  
20    Diaz; am I correct?

21    **A.**    Yes.

22    **Q.**    Based on the affidavit you executed in support of the  
23    Title 3 order, Gomez Diaz was a Dominican National who was a  
24    multi-kilo broker of cocaine from Venezuela to the Dominican  
25    Republic to New York, and the head of that particular

1 organization was a Columbian National who resided in Venezuela?

2 **A.** That sounds correct.

3 **Q.** Gomez Diaz had been the subject of prior DEA  
4 investigations in Miami and New York and elsewhere?

5 **A.** I believe that is correct as well.

6 **Q.** Did you ever personally question anybody in the Special  
7 Operations Division or was your questioning limited to the two  
8 attorneys?

9 **A.** Are you referring to my affidavit, sir?

10 **Q.** Your affidavit of the -- I'm sorry -- of February 2018.

11 **A.** I didn't speak to any attorneys other than my division  
12 counsel. I spoke to case agents other than --

13 **Q.** Case agents?

14 **A.** Yes.

15 **Q.** Now, the DEA has a Caribbean section, correct?

16 **A.** It does.

17 **Q.** And there's a main office, if you will, in Puerto Rico?

18 **A.** Correct.

19 **Q.** A division office, and then there's a series of what are  
20 called country offices, correct?

21 **A.** That's correct.

22 **Q.** A country office is usually staffed by one or more agents  
23 and a series of intelligence analysts?

24 **A.** As well as a Country Attache.

25 **Q.** As well as a Country Attache.

1           Ordinarily, they operate out of our embassies in those  
2 locations where they exist?

3     **A.**   That's fairly typical, yes.

4     **Q.**   Could you tell me, if you know, for how long the  
5 individual who was in the Santo Domingo country office, and I  
6 believe you said the name was -- was it Pulido?

7     **A.**   Roxana Pulido.

8     **Q.**   Pulido.

9           For how long, as of February 2018, had Roxane Pulido  
10 been stationed as the agent in the Santo Domingo office?

11     **A.**   As of February 2018, she was no longer stationed in the  
12 Dominican office. She had been promoted. I believe she was in  
13 Puerto Rico.

14     **Q.**   Was she the resident agent in the Santo Domingo office  
15 prior to the wiretap, the Dominican wiretap, being initiated?

16     **A.**   When you refer to a resident agent, a special agent  
17 working in that office?

18     **Q.**   A special agent working in that office.

19     **A.**   She was.

20     **Q.**   Did the DEA also have what are called vetted agents or  
21 vetted employees in that office that would not be governmental  
22 employees, but people who were paid salaries?

23     **A.**   That's a difficult question for me to answer. Let me tell  
24 you what I do know. The DEA has agents and analysts working  
25 down there. They then, when you say "vet," the groups that



1 work with the DEA down there, which are actually Dominican  
2 Nationals, Dominican police departments, DNCD to be particular,  
3 DEA vets them. They do background investigation on them to  
4 make sure that the information that we are sharing with them  
5 and they are sharing with us is not going to be corrupted.

6 Is that what you're referring to, sir?

7 **Q.** Well, do those individuals -- let me maybe back it up.

8 There are several kinds of vetted employees, correct?

9 **A.** Yes.

10 **Q.** There are what I would call local police departments in  
11 the DR, in the Dominican Republic, and then there are  
12 individuals who provide information?

13 **A.** I can't answer that accurately. I don't know.

14 **Q.** So do you know, on your own personal knowledge, whether or  
15 not the DEA has some form of Memorandum of Understanding  
16 regarding cooperation with the Dominican authorities?

17 **A.** I don't know.

18 **Q.** Did you ever determine or attempt to find that out when  
19 you were executing the February 2018 affidavit?

20 **A.** That is not a question I asked, no.

21 **Q.** Are you aware of whether or not the DEA has Memorandums of  
22 Understanding anywhere in the Caribbean with other either  
23 foreign nations or the territory of Puerto Rico?

24 **A.** I don't know.

25 **Q.** So you indicated in the body of your affidavit that you

1 were confident that you spoke to everyone who would have  
2 knowledge that was relevant to whether or not there was a joint  
3 investigation between the DEA and the Dominican Republic.

4 **A.** I did.

5 THE COURT: The most relevant knowledge is what he  
6 represents in the affidavit.

7 MR. BONGIORNI: The most relevant knowledge, okay.

8 THE COURT: Most relevant.

9 BY MR. BONGIORNI:

10 **Q.** But you'll agree with me that in that regard, you did not  
11 speak directly to anyone --

12 (A cell phone rings.)

13 MR. BONGIORNI: Excuse me, Judge, I'm...

14 (Cell phone turned off.)

15 BY MR. BONGIORNI:

16 **Q.** That you didn't speak to anybody in the Special Operations  
17 Division directly?

18 **A.** I did not speak to anybody in the SOD directly.

19 **Q.** To your knowledge, did the DEA, in 2016, have a systemwide  
20 lead tracking system?

21 Do you know what I mean when I say that?

22 **A.** No, you need to be a little more specific, sir.

23 **Q.** Well, the DEA has an overseas or a foreign operations  
24 division, correct?

25 **A.** We have nothing that's called the foreign operations

1 division that I know of.

2 **Q.** Is it an Office of International Affairs?

3 **A.** We do have that.

4 **Q.** Within the Office of International Affairs, does the DEA  
5 have the ability to track information that comes to each of the  
6 country offices?

7 **A.** I see where you're going now.

8 So you're asking me if there is a way to track leads,  
9 so if I was providing information to somebody in another  
10 office, is there a way to track those leads?

11 **Q.** Sure.

12 **A.** In some instances, yes, there is.

13 **Q.** But in 2016, would you agree with me that there was no way  
14 that the DEA had systematically to track if like the Special  
15 Operations Division provided information to the Dominican  
16 authorities that led to the issuance of a wiretap, you wouldn't  
17 be able to determine that by accessing a system that would have  
18 it?

19 **A.** I cannot answer that question. I don't know.

20 **Q.** So would you agree with me that the universe of people  
21 that you spoke to with respect to these questions was  
22 Ms. Pulido, who was the Country Attache resident agent, and the  
23 gentleman that you identified from the Field Office of  
24 New York, I forget what his name was?

25 **A.** Manny Rego.

1       **Q.**     Manny Rego.

2                   Were those the -- was that the universes of  
3 individuals that you spoke directly to?

4       **A.**     And Division Counsel, Cara Krysil.

5       **Q.**     But were you seeking legal advice from her or was she just  
6 providing you a source of information that she was receiving  
7 from some other third party?

8       **A.**     The latter which you just said.

9       **Q.**     So she --

10       **A.**     She was speaking to certain individuals. We basically  
11 broke up the task. There were four very specific questions  
12 listed there. I sent her those questions. I said we need to  
13 talk to a certain number of people to try and answer these  
14 questions. She handled part of the task, I handled part of the  
15 task, we spoke again, and we generated an affidavit.

16       **Q.**     So just so I'm clear, this affidavit that you authored  
17 wasn't based upon your personal knowledge in the sense that you  
18 actually knew these facts or you were able to look at a  
19 document and say this is what it reflects, you were relying on  
20 what someone else was telling you occurred?

21       **A.**     Both. I was relying on what I learned from an agent in  
22 the Dominican Republic --

23       **Q.**     Right.

24       **A.**     -- an agent in New York, and my conversations with  
25 Ms. Krysil, who had spoke to an attorney in SOD, as well as a

1 Country Attache in the Dominican Republic.

2 **Q.** But when you asked the questions, for instance, of the  
3 agent in the Dominican Republic, would you agree with me that  
4 you didn't ask her whether or not the individuals who applied  
5 for the Dominican wiretap had been in any way funded or trained  
6 or supported by the United States Government through the DEA,  
7 did you?

8 **A.** I did not.

9 **Q.** And the DEA does provide both training, funding and  
10 intelligence information with respect to certain  
11 investigations?

12 **A.** I believe it does.

13 **Q.** Based on your knowledge of the investigations, is it your  
14 belief or is it your testimony that the Dominican investigation  
15 predated the investigation that was aimed at Sergio Gomez Diaz?

16 **A.** My investigation?

17 **Q.** No, the --

18 THE COURT: Yeah. This investigation in this context  
19 is a completely vague and uninformative term.

20 MR. BONGIORNI: Sure. I will --

21 BY MR. BONGIORNI:

22 **Q.** There was, prior to the Dominican wiretap, DEA had  
23 investigations that were directed at Sergio Gomez Diaz?

24 **A.** I've heard they had, yes.

25 **Q.** Well, you included that information in the wiretap

1 affidavit that you authored, correct?

2 **A.** Yes.

3 **Q.** And you identified those areas of the country, including  
4 Miami and New York, that had investigations directed at that  
5 individual, correct?

6 **A.** Correct.

7 **Q.** In fact, the field district in New York had an  
8 investigation that was directed at Sergio Gomez Diaz that was  
9 actually active, which is how your Field Office came into this  
10 portion of the investigation?

11 **A.** That's correct.

12 **Q.** So the investigation centers around Sergio Gomez Diaz and  
13 an unknown Columbian National originally?

14 **A.** (Inaudible) in the investigation, yes.

15 **Q.** Correct.

16 And was that information --

17 (A cell phone rang.)

18 THE COURT: Uh --

19 MR. BONGIORNI: Apparently, I don't even know how to  
20 turn it off.

21 Why don't you turn that off.

22 I apologize.

23 THE COURT: That's alright. Go ahead.

24 BY MR. BONGIORNI:

25 **Q.** So the investigation by the New York office that was

1 directed against Sergio Gomez Diaz was operational before your  
2 investigation in January of '16?

3 **A.** If operational means in existence, yes.

4 **Q.** Yes.

5 And do you know from what period of time it had been  
6 in existence?

7 **A.** I don't know exactly, no.

8 **Q.** Do you know, at least based on your conversations with the  
9 agent in New York, whether it had any connection to the wiretap  
10 in the Dominican Republic?

11 **A.** I don't know the answer to that.

12 **Q.** Is that because you don't know?

13 **A.** Yes, because I don't know.

14 **Q.** So would you agree with me that the individual that you  
15 queried in preparation for preparing your affidavit, the  
16 gentleman, is it Manuel --

17 **A.** Rego.

18 **Q.** Manuel Rego. So you never questioned him about whether or  
19 not his Field Office had been involved with the Dominican  
20 authorities in that wiretap?

21 **A.** My questions to him were very specific in regards to the  
22 Court's questions to the Government. I posed the questions as  
23 they were written in the Court's order to them. I said, "Did  
24 you initiate an investigation with the Dominican authorities?"  
25 He answered, "No."

1     **Q.**    Well, did you ask whether or not he shared information of  
2    his investigation with the Dominican authorities?

3     **A.**    I did not.

4     **Q.**    Or did you ask him whether or not he had requested some  
5    assistance based on the information that he had produced, or  
6    whether he shared that information with the Dominican  
7    authorities?

8     **A.**    I asked him very specific questions which were detailed by  
9    the Court to the Government.

10    **Q.**    So would you agree with me that you were attempting to  
11   make your questions to him as narrow as you possibly could?

12    **A.**    No, I wouldn't agree.

13    **Q.**    Well, you were confining it, at least, to only those  
14   questions that were in the Court's order?

15    **A.**    I was posed with the task. I did my task.

16    **Q.**    So with respect to the wiretap in the Dominican Republic,  
17   when you were attempting to answer the Court's questions, would  
18   you have questioned anybody in the DEA about whether or not  
19   they had provided technical assistance to the individuals in  
20   the Dominican Republic?

21    **A.**    Could you define what you mean by technical assistance?

22    **Q.**    Well, sure. Provide monitoring equipment paid for through  
23   a grant for local officers to get overtime pay to monitor an  
24   operation like that.

25               When you have a wire -- let me stop for a minute.



1           When you have a wiretap that exists for 15 months,  
2       it's manpower intensive?

3       **A.**    That's correct.

4       **Q.**    So it usually involves a fairly large expenditure of  
5       money, even to run one like the one that you did?

6       **A.**    It does.

7       **Q.**    So did you ever attempt to inquire as to whether or not  
8       the United States Government, through the DEA, had ever  
9       provided any financing for the wiretap that resulted in the  
10      interception of Mr. Marte's communications?

11      **A.**    I did not inquire specifically about Mr. Marte's  
12      communication. That's a specific wiretap. I do know that DEA  
13      does fund, as you say, technical equipment and that type of  
14      thing for Dominican Nationals.

15      **Q.**    Do they also -- remember we had talked about those vetted  
16      employees. Is there a thing within the Country Attache called  
17      a Sensitive Investigations Unit employees, SIU?

18      **A.**    I have heard of SIU, yes.

19      **Q.**    Did you make any inquiry to determine whether or not any  
20      of the DEA's SIU employees in the country office in  
21      Santo Domingo were involved in this wiretap?

22      **A.**    I don't believe that was a question posed by the Court to  
23      the Government.

24      **Q.**    Can you tell -- would such information exist?

25      **A.**    I don't know.

1 Q. Well, these individuals are paid, aren't they?

2 A. Are you referring to the office in (inaudible)?

3 Q. Well, the officers, if they have vetted special  
4 investigative units, those are individuals that work directly  
5 with DEA in those country offices?

6 A. Correct.

7 Q. Are they paid by the United States Government?

8 A. I don't know the answer to that.

9 Q. If they were, would you agree with me that there would be  
10 a record of it?

11 MR. DESROCHES: Objection, your Honor. When he says  
12 he doesn't know if these things exist, I think this is a very  
13 hypothetical question.

14 THE COURT: I think Agent Barron can say whether or  
15 not he knows. If he doesn't know, that's --

16 THE WITNESS: I don't know.

17 BY MR. BONGIORNI:

18 Q. So it's possible that people -- that the United States  
19 Government paid for people to work in the Dominican Republic on  
20 this wiretap, you just didn't go to those areas to look or you  
21 didn't ask these particular questions?

22 A. I asked questions very specific to what the Court ordered.

23 Q. Right.

24 So if the -- do you know whether or not the Special  
25 Operations Division provided investigatory leads to the

1 New York Field Office?

2 **A.** Yes, they did.

3 **Q.** And the New York Field Office was the individual office  
4 that had an up-and-running extant investigation aimed at Sergio  
5 Gomez Diaz?

6 **A.** Yes.

7 **Q.** Can you tell me whether or not the Special Operations  
8 Division had also targeted Mr. Sergio Gomez Diaz in the Miami  
9 investigation?

10 **A.** The Special Operations Division doesn't target anybody.  
11 They act as an intermediary between two offices.

12 **Q.** Was there an office -- did the Caribbean office contain a  
13 country office in Venezuela?

14 **A.** I'm not positive. I believe so, but I'm not sure.

15 **Q.** Do you know whether or not they had one at one time in  
16 Caracas?

17 **A.** I believe they did.

18 **Q.** Do you believe that there was an office in Caracas as of  
19 the time that the New York Field Office began its investigation  
20 of Sergio Gomez Diaz and the Columbian individual residing in  
21 Venezuela that was suspected of being the source of Gomez  
22 Diaz's drugs that were being funneled to New York?

23 **A.** You're asking if I believe there was an office in Caracas  
24 at that time?

25 **Q.** Yes.

1     **A.**     Yes, I do.

2     **Q.**     Now, the Special Operations Division would be able to have  
3     contacts with all of those offices, Caracas, Santo Domingo,  
4     Miami, New York?

5     **A.**     Yes.

6     **Q.**     Can you tell me what the purpose, or what your  
7     understanding was of the purpose, for a Special Operations  
8     Division individual being at the March meeting, the meeting  
9     that you were informed about the wiretap?

10    **A.**     The Special Operations Division --

11                 THE COURT:  Wait a second, wait a second.  What was  
12    the question?

13                 It ended and I didn't hear the end of the question.

14                 MR. BONGIORNI:  I'm sorry.

15    BY MR. BONGIORNI:

16    **Q.**     What was your understanding of the purpose of the March  
17    meeting at which there was Special Operations Division  
18    personnel present?

19    **A.**     The Special Operations Division, in the best layman's term  
20    I can explain it in, is like a broker.  They bring people  
21    together to share information.

22                 So if I'm going to run a wiretap, I need to contact  
23    the SOD, the Special Operations Division, let them know I'm  
24    running a wiretap, this is who I'm running it on, these are the  
25    numbers I'm looking at.  Other offices do the same thing, they

1 provide that information to the Special Operations Division.

2 When some of this information intersects, as it did in  
3 this case, they will then say okay, Agent, Barron, you need to  
4 talk to Agent Pulido in the Dominican Republic because some of  
5 her information is overlapping with some of your information.  
6 They will then bring those people together and say  
7 Agent Barron, this is Agent Pulido, you guys should have a  
8 conversation.

9 **Q.** Would Special Operations also share information with  
10 foreign police forces?

11 **A.** I don't know the answer to that.

12 **Q.** So they may, you just don't know one way or the other?

13 **A.** Correct.

14 **Q.** So if the Special Operations Division forwarded  
15 intelligence that was used in obtaining the Dominican wiretap,  
16 you just either didn't question the appropriate person or you  
17 don't know the answer?

18 **A.** I could tell you the Special Operations Division in this  
19 case, this investigation, did not forward any information to  
20 the Dominican Nationals.

21 **Q.** Is that based on your personal knowledge or is that based  
22 on a conversation that you had with someone else?

23 **A.** That is based on a conversation that Cara Krysil had with  
24 the attorney in Special Operations, who then spoke with several  
25 people that are involved in this investigation.

1 Q. Now, the Special Operations does not usually advertise  
2 it's work, right?

3 A. That's correct.

4 Q. It's a departmentalized, fairly secretive, portion of the  
5 DEA?

6 A. I don't know if it's really a secret. We're talking about  
7 it in open court right here (inaudible).

8 Q. Well, you're talking -- have you known any agent of the  
9 Special Operations Division who has testified under oath in a  
10 courtroom, in an open court?

11 MR. DESROCHES: Objection.

12 THE COURT: Yeah, I'm going to sustain the objection.

13 BY MR. BONGIORNI:

14 Q. In any event, just so I can make sure that I've -- that  
15 the number of individuals that you spoke to, really, who might  
16 have personal knowledge, were the individual in Santo Domingo  
17 and the gentleman in New York, correct?

18 A. Correct.

19 Q. And anything else that you would have learned, either from  
20 the counsel for -- your legal counsel or SOD's legal counsel,  
21 was all knowledge that was not first-hand and is based on them  
22 speaking to perhaps two or three or four other individuals?

23 A. It was based on Ms. Krysil speaking with an attorney in  
24 SOD and the Country Attache in the Dominican Republic.

25 Q. So, once again, that wouldn't be based on your personal

1 knowledge, correct?

2 **A.** Correct.

3 **Q.** With respect to the individuals who actually ran the  
4 wiretap in the Dominican Republic, you can't tell us whether or  
5 not they were paid by the United States Government through the  
6 DEA, correct?

7 **A.** I cannot.

8 **Q.** You don't know whether the investigative leads were  
9 provided by vetted individuals employed by the DEA in the  
10 Sensitive Investigations Unit working out of that country  
11 office?

12 **A.** That's correct.

13 **Q.** And whether or not the DEA provided either equipment or  
14 technical assistance, you wouldn't know because the two people  
15 you spoke to weren't asked those questions?

16 **A.** I believe I answered that DEA does provide them with the  
17 equipment to monitor these phones.

18 **Q.** And with respect to funding, you wouldn't know one way or  
19 the other whether or not this was a fairly expensive  
20 proposition of more than a year-long wiretap?

21 **A.** Agreed.

22 **Q.** The target of the Dominican wiretap was not Sergio Gomez  
23 Diaz, but an individual named Kevin?

24 **A.** The target of which Dominican wiretap?

25 **Q.** The Dominican wiretap that we're talking about here, the

1 one that took place in the Dominican Republic and lasted for  
2 approximately 13 or 14 months.

3 **A.** The target of their wiretap is Sergio Gomez. That's who  
4 they were listening to.

5 **Q.** And it wasn't somebody other than Sergio Gomez?

6 **A.** I don't know who else is involved in that investigation.  
7 I can tell you that they were listening to Sergio Gomez.

8 **Q.** You don't know whether or not the DEA had one or more  
9 active investigations aimed at Sergio Gomez Diaz before the  
10 Dominican wiretap began?

11 **A.** I don't know if they were active. I know he had been  
12 named in at least one, maybe two, prior investigations prior to  
13 that.

14 **Q.** But you don't know whether those -- when he was named in  
15 those prior investigations, that that was before the Dominican  
16 wiretap began?

17 **A.** I don't know.

18 MR. BONGIORNI: I don't have any further questions.

19 THE COURT: Alright. Mr. O'Donald, any questions for  
20 Agent Barron?

21 MR. O'DONALD: Your Honor, I don't have any questions.

22 THE COURT: So Mr. Desroches?

23 MR. DESROCHES: Thank you, your Honor.  
24  
25



**CROSS-EXAMINATION OF SPECIAL AGENT JOHN BARRON**

**BY MR. DESROCHES:**

**Q.** Good morning, Agent Barron.

**A.** Good morning, Mr. Desroches.

**Q.** So you had just been asked some questions about your preparation to write an affidavit that you filed with this court; is that correct?

**A.** That's correct.

**Q.** You indicated that you spoke to, directly, Special Agent Manuel Rego; is that correct?

**A.** Correct.

**Q.** Can you please describe what his role is.

**A.** He was the lead investigator of the Sergio Gomez and Rudy Gomez investigation operating out of New York.

**Q.** Why did you speak to him?

**A.** Because he was part of the group that passed me the original information and part of the group that had been dealing directly with the Dominican Republic.

**Q.** When you described that that group was investigating Sergio Gomez and another individual by the name of Rudy Gomez, is it your understanding that Rudy Gomez was operating in New York?

**A.** It is.

**Q.** And is it also your understanding that Sergio Gomez was supplying Rudy Gomez with heroin from the Dominican Republic?

1     **A.**    That's my understanding, yes.

2     **Q.**    So their primary interest at that point was the  
3    distribution of heroin in New York; is that fair to say?

4     **A.**    Correct.

5     **Q.**    When you spoke to Special Agent Rego, did you believe that  
6    he would have answers to questions as to whether or not they  
7    requested the Dominican Nationals initiating wiretap into --  
8    I'm sorry, involving Sergio Gomez?

9     **A.**    I did.

10    **Q.**    Did you believe he would be one of your best sources of  
11   information from that office regarding that question?

12   **A.**    I did. He was the lead investigator in that  
13   investigation.

14   **Q.**    Do you recall approximately when that investigation began  
15   in New York?

16   **A.**    Sometime a few months before my investigation began here  
17   in Massachusetts. I would think late 2015.

18   **Q.**    So you said you also spoke to a Roxana Pulido; is that  
19   correct?

20   **A.**    Correct.

21   **Q.**    Why did you speak to Ms. Pulido?

22   **A.**    Because she was the lead investigator operating out of  
23   New York in this investigation -- excuse me, operating out of  
24   the Dominican Republic in this investigation.

25   **Q.**    And --

1           THE COURT: When you say "this investigation," Agent  
2 Barron, could you be more specific about which investigation  
3 you're talking about.

4           THE WITNESS: Yes. Sergio Gomez/Rudy Gomez/Alberto  
5 Marte investigation.

6           THE COURT: So you're calling that a single  
7 investigation?

8           MR. DESROCHES: If I could ask questions (inaudible).

9           THE COURT: Yeah.

10          BY MR. DESROCHES:

11          **Q.** So just so we're all clear, let's refer to the  
12 investigation targeting Sergio Gomez as the 2015 investigation.

13          **A.** Okay.

14          **Q.** And the investigation that you conducted into Mr. Marte is  
15 the Marte investigation.

16          **A.** Correct.

17          **Q.** And the investigation out of New York as the New York  
18 investigation.

19          **A.** Okay.

20          **Q.** So, now, with that in mind, what role did Ms. Pulido play?

21          **A.** Ms. Pulido was an agent operating in the Dominican  
22 Republic who was passing information she gained through the  
23 Dominican Republic's investigation down there to Mr. Rego in  
24 New York.

25          **Q.** So her role was to pass information she got from Dominican

1 authorities to New York; is that correct?

2 **A.** Correct.

3 **Q.** Did you believe that she would have information that was  
4 responsive to the Court's order in regards to the wiretap?

5 **A.** I did.

6 **Q.** Did you believe that she was in the best position to  
7 answer those questions?

8 **A.** I did.

9 **Q.** You also indicated you spoke to Cara Krysil, who is the  
10 Division Counsel for the DEA.

11 **A.** Yes.

12 **Q.** Can you describe what her role is.

13 **A.** She is the DEA's attorney operating in Boston,  
14 Massachusetts.

15 **Q.** When you spoke to her, was it clear to you that she  
16 understood why you were speaking to her?

17 **A.** It was.

18 **Q.** She reached out to other parties as well, correct?

19 **A.** Correct.

20 **Q.** Including Division Counsel for the SOD; is that right?

21 **A.** Correct.

22 **Q.** What role does the Division Counsel for SOD play?

23 **A.** They are the attorney on record for the Special Operations  
24 Division.

25 **Q.** Have you reviewed the response from that attorney?

1     **A.**     I did.

2     **Q.**     Was that informative to you in regard to the Court's  
3     questions?

4     **A.**     It was.

5     **Q.**     Did you learn -- and what did you learn from that inquiry  
6     to the SOD?

7     **A.**     That the SOD did not pass any leads to the Dominican  
8     Republic, that SOD did not initiate any investigation with the  
9     Dominican Republic, and that SOD did not maintain any records  
10    of any information coming back and forth between the Dominican  
11    Republic and the United States.

12    **Q.**     Did you also learn that the SOD is not engaged in a joint  
13    investigatory relationship with the Dominican Republic?

14    **A.**     I did.

15    **Q.**     In fact, what role did the SOD play in this  
16    investigation -- I'm sorry, in the Marte investigation, your  
17    investigation?

18    **A.**     They acted as an intermediary between the DEA in  
19    Massachusetts, the DEA in New York, and the DEA in the  
20    Dominican Republic.

21    **Q.**     Now, that meeting that you testified to that occurred at  
22    SOD in March of 2016, is it fair to say the purpose of that  
23    meeting was to deconflict with other offices in the DEA?

24    **A.**     Correct.

25    **Q.**     Is that consistent with the role that the SOD played

1 throughout the Marte investigation?

2 **A.** It is.

3 **Q.** You also indicated that Ms. Krysil spoke to the Country  
4 Attache for the Dominican Republic.

5 **A.** That's correct.

6 **Q.** What role does the Country Attache play in the Marte  
7 investigation?

8 **A.** Specifically in the Marte investigation, none.

9 **Q.** What role does the Country Attache play in the New York  
10 investigation?

11 **A.** Zero.

12 **Q.** And what role does the Country Attache play in the 2015  
13 investigation?

14 **A.** None that I know of.

15 **Q.** What information would the Country Attache have that would  
16 be relevant to the questions this Court asked?

17 **A.** She would be able to provide Ms. Krysil with the DEA's --  
18 Mr. Bongiorno's Memorandum of Understanding. I don't know if  
19 there's a National Memorandum of Understanding, but DEA's  
20 policies so far as how things are handled between the  
21 United States and the Dominican Republic.

22 **Q.** What did you learn from those conversations?

23 **A.** The DEA does not initiate investigations in the Dominican  
24 Republic.

25 **Q.** In terms of the ongoing involvement of the DEA -- I'm

1       sorry, strike that. We'll get to that in a moment.

2               Based on your conversations with Ms. Pulido and your  
3       review of documents and the conversations you had with  
4       Special Agent Rego, did you learn when the 2015 investigation  
5       in the Dominican Republic started?

6       **A.**    I know their first order for a wiretap was in January of  
7       2015, so it would have to predate that.

8       **Q.**    So because the wiretap began in January 2015, the  
9       investigation would have had to start prior to that date; is  
10      that correct?

11      **A.**    Correct.

12      **Q.**    When did the Marte investigation start?

13      **A.**    January of 2016.

14      **Q.**    And you testified that the New York investigation began  
15      approximately two or three months prior to the Marte  
16      investigation?

17      **A.**    That's what I believe, yes.

18      **Q.**    So is it fair to say that the Dominican Republic was  
19      investigating Sergio Gomez independently for over a year prior  
20      to when the Marte investigation started?

21      **A.**    That's correct.

22      **Q.**    Did you learn that the DEA never requested that that  
23      wiretap of Mr. Gomez Diaz, the 2015 wiretap, had no -- the DEA  
24      did not request that wiretap?

25      **A.**    The DEA did not request that wiretap.

1     **Q.**    Did you learn -- did the DEA request that Dominican  
2     officials apply for the court order authorizing that wiretap?

3     **A.**    They did not.

4     **Q.**    Did you learn that the DEA became aware of the  
5     investigation long after its inception?

6     **A.**    I did.

7             THE COURT:   Became aware of *the* investigation?

8             MR. DESROCHES:   I'm sorry, the 2015 investigation well  
9     after the inception.

10            MR. BONGIORNI:   The Dominican Republic investigation,  
11    is that because there's --

12    BY MR. DESROCHES:

13    **Q.**    You may answer the question, Agent Barron.

14    **A.**    Yes, I am.

15    **Q.**    Did the DEA agents or anyone in the DEA supervise, direct  
16    or control the Dominican wiretap that intercepted  
17    Defendant Marte's communications with the target of that  
18    Dominican Republic investigation?

19    **A.**    They did not.

20    **Q.**    When was Mr. Marte intercepted on that Dominican wiretap?

21    **A.**    It was the beginning of March of 2016.   I actually  
22    received the information on March 16, 2016.

23    **Q.**    And it was intercepted in 2016 as well?

24             THE COURT:   Wait a second.   Yeah, he just -- did you  
25    just testify that he was intercepted in March of 2016 on --



1       that's what he said; isn't that right?

2               THE WITNESS: Yes, that's correct.

3               THE COURT: So that was the only time; is that right?

4       BY MR. DESROCHES:

5       **Q.** Is that correct, how many times was Mr. Marte, to your  
6       knowledge, intercepted?

7       **A.** Twice.

8       **Q.** When did the second interception occur?

9       **A.** They were within several hours or a day of each other.  
10      They were fairly close.

11      **Q.** And that occurred over a year after the Dominican wiretap  
12      was initiated; is that correct?

13      **A.** Correct.

14      **Q.** Did DEA agents personally participate in the intercepting  
15      and recording of Mr. Marte's communications with the target of  
16      the Dominican wiretap?

17      **A.** They did not.

18      **Q.** You testified in response to Attorney Bongiorno's  
19      questions about funding that the DEA gives to the Dominican  
20      Republic.

21      **A.** Yes.

22      **Q.** Is that funding specific to the Marte investigation?

23      **A.** It is not.

24      **Q.** Is it specific to any investigation?

25      **A.** It's not.

1     **Q.**    So how is it then, based on your knowledge, given or  
2     provided to the Dominican Republic?

3     **A.**    How is the funding provided to them?

4     **Q.**    Correct.

5     **A.**    I don't know exactly.

6     **Q.**    Is it specific to an investigation?

7     **A.**    It is not.

8     **Q.**    So it's a general grant of money to the Dominican Republic  
9     in order to conduct general investigations?

10    **A.**    Counter-narcotics investigations.

11    **Q.**    In terms of the equipment, did the DEA provide equipment  
12    that was used specifically -- I'm sorry, strike that.

13               Did the DEA specifically provide information or  
14    equipment to authorities in the Dominican Republic in order to  
15    conduct the investigation that resulted in Mr. Marte being  
16    intercepted?

17    **A.**    No.

18    **Q.**    So how is it that the DEA provides equipment to the  
19    Dominican Republic?

20    **A.**    They provide -- I would say in Mass., they provided  
21    equipment necessary to conduct counter-drug investigations.

22    **Q.**    Again, that's not specific to any particular  
23    investigation; is that correct?

24    **A.**    No.

25    **Q.**    So is it fair to say that the extent of the cooperation

1 between the Dominican Republic and the DEA in this case, in the  
2 Marte investigation, was the provision of the two interceptions  
3 that occurred in March 2016 and that involved Mr. Marte?

4 **A.** I wouldn't say it's the full extent of it, but that's  
5 where things began.

6 **Q.** Well, what is the full extent of it?

7 **A.** What assistance did the DNC provide DEA in regards to  
8 Mr. Marte?

9 **Q.** Correct.

10 **A.** Past information on Sergio Gomez, I would say. Most of  
11 this information though went to New York, not directly to me in  
12 Massachusetts.

13 **Q.** So the extent was sharing of information?

14 **A.** Correct.

15 **Q.** Now, based on your conversations with the people that  
16 we've discussed and Ms. Krysil's conversations that you've had  
17 an opportunity to review, how do you believe that you can  
18 answer these questions?

19 How is that you believe you can answer these  
20 questions?

21 **A.** I believe I asked the two people who would have knowledge  
22 to answer these four questions, specifically the questions that  
23 they were posed, and they had the knowledge and they were in  
24 the position to answer those questions accurately.

25 **Q.** And do you believe that the individuals Ms. Krysil spoke

1 to also had the relevant information?

2 **A.** I do.

3 (Pause.)

4 MR. DESROCHES: Thank you. I have no further  
5 questions.

6 THE COURT: Alright. Mr. Bongiorno, any  
7 cross-examination?

8 MR. BONGIORNI: Sure.

9 **REDIRECT EXAMINATION OF SPECIAL AGENT JOHN BARRON**

10 **BY MR. BONGIORNI:**

11 **Q.** Agent Barron, with all the questions that Mr. Desroches  
12 just posed to you, you're relying on what someone else  
13 represented to you, correct?

14 **A.** I am.

15 **Q.** Your beliefs are not based on personal knowledge about  
16 things that you saw or could read or touch, but they're based  
17 on conversations that other people have had with other people,  
18 correct?

19 **A.** That's correct.

20 **Q.** To your knowledge, would Ms. Pulido have been in a  
21 position, if a Dominican wiretap was initiated by the Dominican  
22 authorities, based on the -- if there's a Memorandum of  
23 Understanding or the fact that they have a Country Attache  
24 there with Dominican authorities, alert DEA to the fact that  
25 they were going to be running a wiretap?

1     **A.**     Can you ask that question one more time?

2     **Q.**     Sure.

3             When you spoke to Ms. Pulido in preparation for  
4     executing your affidavit, did you ask her whether or not the  
5     authorities in the Dominican Republic would provide her with  
6     information that they had a wiretap potentially (inaudible)  
7     telephones or cell phones in the United States as part of the  
8     protocol?

9             THE COURT:   Yeah.   Could you rephrase that --

10            MR. BONGIORNI:   Sure.

11            THE COURT:   -- maybe break it down into a couple of  
12     questions?

13            THE WITNESS:   It's kind of a broad question.

14            MR. BONGIORNI:   I can do that.

15     BY MR. BONGIORNI:

16     **Q.**     Sergio Gomez Diaz was a target of the New York wiretap and  
17     so was Rudy Diaz?

18     **A.**     I believe Sergio Gomez Diaz was the target of a Dominican  
19     Republic wiretap.

20     **Q.**     Right.

21            And Rudy Diaz, was he a target of a wiretap in the  
22     New York district?

23     **A.**     Not by DEA, but by another agency.

24     **Q.**     By another agency.

25            Was Rudy Diaz someone who had been exposed to the

1 New York office through the Dominican wiretap?

2 **A.** Rudy Diaz?

3 **Q.** Rudy Diaz.

4 **A.** Rudy Gomez?

5 **Q.** Rudy Gomez Diaz.

6 **A.** Is Rudy Gomez someone -- maybe one more time.

7 **Q.** Sure. Let me maybe back it up.

8 **A.** You're starting to confuse me with that.

9 **Q.** Sergio Gomez Diaz, I believe you testified, was an  
10 individual who stayed in the Dominican Republic, and he  
11 brokered, essentially, sales of heroin and cocaine to  
12 individuals in the United States?

13 **A.** Yes.

14 **Q.** One of those individuals was an individual in New York who  
15 was related to him in some way?

16 **A.** Correct.

17 **Q.** And what was that relationship?

18 **A.** I believe he was his nephew.

19 **Q.** So Sergio -- I'm going to use the last name -- Diaz, in  
20 the Dominican Republic, has a nephew -- you believe is a  
21 nephew, named Rudy Diaz in New York?

22 **A.** Correct.

23 **Q.** And Rudy Diaz obtains quantities of whatever controlled  
24 substances that Sergio Diaz brokers in the Dominican Republic?

25 **A.** Correct.

1     **Q.**     So when the Dominican authorities conducted a wiretap, and  
2     you believe it took place in January of 2015, Sergio Gomez Diaz  
3     was a target of that wiretap, correct?

4     **A.**     Correct.

5     **Q.**     As a result of that wiretap, Rudy Diaz was identified in  
6     New York?

7             THE COURT:   If you know.

8     **Q.**     If you know.

9     **A.**     I think eventually yes, he was.

10    **Q.**     So Ms. Pulido, based on her position in the DEA, would she  
11    have been aware of the existence of the January 2015 wiretap,  
12    Dominican wiretap?

13    **A.**     She would not be aware of that wiretap until it became  
14    pertinent to her.

15    **Q.**     So the Dominican authorities, based on your  
16    conversation -- was this based on your knowledge or based on a  
17    conversation with her?

18    **A.**     This is based on my conversation with her.

19    **Q.**     They wouldn't have told her until it became pertinent to  
20    her?

21    **A.**     Correct.

22    **Q.**     And how would the Dominican authorities determine whether  
23    or not it was pertinent to her?

24    **A.**     When that person that they were intercepting started  
25    dialing or talking to telephones which they believed were in

1 the United States.

2 **Q.** So at least there was some understanding that officials in  
3 the Dominican Republic, once they saw area codes that were from  
4 the United States, would that alert the Country Attache office?

5 **A.** If those calls were deemed pertinent by the Dominican  
6 Nationals and they were to United States area codes, they would  
7 then pass that information along.

8 **Q.** So Ms. Pulido wouldn't have anything to do or any  
9 knowledge about the Dominican wiretap, in terms of how it was  
10 initiated, who provided the information for it, or anything  
11 like that?

12 **A.** She has basic knowledge of how it was initiated, like what  
13 brought Sergio Gomez onto the radar, but nothing specific.

14 **Q.** Nothing.

15 So she wouldn't have specific information about how  
16 the Dominican authorities came to obtain that wiretap because  
17 she wouldn't actually even be notified that it was in existence  
18 until such time as that wiretap began to identify area codes in  
19 the United States?

20 **A.** She would have the orders which they filed with the judge,  
21 the judiciary down there, detailing their information. It's  
22 kind of the same view as if I had the information, but I don't  
23 know past that. I can't answer past that.

24 **Q.** Well, when you say she would have the information in the  
25 court order, she wouldn't have the information in the court



1 order when the court order was initially authorized?

2 **A.** That's correct.

3 **Q.** She wouldn't get it until somebody in the Dominican  
4 authorities now recognizes that that wiretap is picking up  
5 American area codes, and then they go to her office and notify  
6 her: Listen, we've now began to intercept people in the United  
7 States?

8 **A.** That's correct.

9 **Q.** So she wouldn't have any information with respect to who  
10 provided the information for the wiretap, what went into it,  
11 where the investigative leads came from, where the probable  
12 cause came from, she wouldn't have any idea about that?

13 **A.** She may have asked them at that point, but I can't answer  
14 that question.

15 **Q.** Because you didn't ask?

16 **A.** Correct.

17 **Q.** So it's your testimony, I just want to make clear, that  
18 there was no employee of the DEA or the United States  
19 Government that either took part in the wiretap, in the  
20 application for that wiretap, or provided information to  
21 Dominican authorities to get that wiretap?

22 **A.** That's correct.

23 MR. BONGIORNI: I don't have any further questions.

24 THE COURT: Mr. Desroches, anything else?

25 MR. DESROCHES: Yes, if I may.

**RECROSS-EXAMINATION OF SPECIAL AGENT JOHN BARRON**

**BY MR. DESROCHES:**

**Q.** In regards to the Dominican Republic investigation, based on your conversations with Ms. Pulido, did you learn what triggered the investigation in the Dominican Republic by the Dominican Nationals?

**A.** I did.

**Q.** What was that?

**A.** There was an airplane seized which was being used to transport (inaudible) being used to transport drugs between the Dominican Republic and Venezuela. That airplane had some type of ties to Mr. Gomez. I don't know exactly what those ties were.

**Q.** That was seized by the Dominican Nationals, correct?

**A.** That's correct.

**Q.** The DEA had no role in that seizure; is that correct?

**A.** That's correct.

**Q.** Ultimately, that seizure is what led to the wiretap in the Dominican Republic; is that right?

**A.** That's correct.

MR. DESROCHES: Thank you. I have no further questions.

THE COURT: Alright.

1                   **CONTINUED REDIRECT EXAMINATION OF SPECIAL AGENT BARRON**

2                   **BY MR. BONGIORNI:**

3                   **Q.**     So --

4                               THE COURT:   Well --

5                               MR. BONGIORNI:   Just --

6                               THE COURT:   One.

7                               MR. BONGIORNI:   One.

8                   **BY MR. BONGIORNI:**

9                   **Q.**     You referenced a document that you received from Special  
10                   Operations Division, a document that you were testifying from  
11                   in terms of what your belief was.

12                               Did I understand Mr. Desroches asked you a question  
13                   about a document you had received?

14                   **A.**     There was an e-mail received, yes.

15                   **Q.**     An e-mail.

16                               Would you voluntarily produce that e-mail?

17                               THE COURT:   Um --

18                               MR. DESROCHES:   Objection.   Thank you.

19                               THE COURT:   The objection is sustained.

20                   **BY MR. BONGIORNI:**

21                   **Q.**     With respect to the seizure of the airplane, did the  
22                   Special Operations Division have anything to do, based on your  
23                   knowledge, with the seizure of that airplane?

24                   **A.**     Not to my knowledge.

25                   **Q.**     You're not saying that couldn't have happened, you just

1 wouldn't know about it?

2 **A.** Correct.

3 MR. BONGIORNI: Thank you. I have no further  
4 questions.

5 THE COURT: Alright. So what I take it I have in  
6 front of me is sort of a renewed request by the defense for  
7 access to certain information related to the Dominican wiretap.  
8 I will hear from counsel for the defense with respect to -- now  
9 that they've had the opportunity to have the evidentiary  
10 hearing, I think I'd like to hear the argument now rather than  
11 requiring written submissions. That would be my preference  
12 because I don't want hold a decision on this issue up further.

13 If you feel strongly that you'd prefer to do it by  
14 written submissions, I'll hear you, but I will set a  
15 comparatively tight time frame.

16 MR. BONGIORNI: No, I think I can make our position  
17 fairly clear.

18 THE COURT: Clear. Okay.

19 MR. BONGIORNI: One of the problems that I had with  
20 the process was that the Court, who is the fact finder who is  
21 tasked with finding facts, has to rely, as we have here, on  
22 multiple and triple levels of hearsay, and that's why I think  
23 in the last submission I asked the Court to formulate a  
24 standard, because I'm sure these things are going to come up in  
25 the future. It's difficult if you have to make a determination

1 about whether or not something did or did not occur, or you  
2 don't have an opportunity to see live witnesses, or you don't  
3 have an opportunity to see documentary evidence that was  
4 created by individuals who have, in fact, personal knowledge.  
5 I know that's the standard in the civil side of it for summary  
6 judgment motions, and while I expect that the Court would  
7 consider some hearsay, if you had some indicia of its  
8 reliability, I don't know how in this case that you have any  
9 indication that what is being represented is reliable because  
10 it's really stepped in, at least what I can see, Agent Barron  
11 speaks to counsel for DEA, who then speaks to counsel for SOD,  
12 who then speaks to someone that we don't know, and then this is  
13 supposed to be the kind of factual menu from which a Court  
14 could make that finding.

15 THE COURT: And that is the process that has occurred,  
16 it seems to me, in every one of these cases where a defendant  
17 has sought access to information on the basis that there is  
18 some kind of a joint investigation.

19 MR. BONGIORNI: Sure.

20 THE COURT: I mean, I don't know of any criminal case  
21 that's established the kind of standard that you're alluding  
22 to, Mr. Bongiorno.

23 MR. BONGIORNI: I tried to find one and the caselaw is  
24 fairly all over the lot, so to speak.

25 THE COURT: Right.

1 MR. BONGIORNI: I couldn't find anything that clearly  
2 said it. Obviously, there are some in which hearsay is  
3 permitted, but this is the kind of hearsay that I think  
4 really -- that you have to say is not truly reliable, that is  
5 because we're having to speculate about what did or did not  
6 happen.

7 I understand the difficulty with that because  
8 Agent Barron really didn't have anything to do with this  
9 investigation, but that's why --

10 THE COURT: When you say "this investigation" --

11 MR. BONGIORNI: Well, this investigation, I'm talking  
12 about the investigation of Sergio Gomez Diaz --

13 THE COURT: In the Dominican Republic.

14 MR. BONGIORNI: -- in the Dominican Republic.

15 THE COURT: He is thoroughly versed, however, in the  
16 investigation, the initiation of the investigation of  
17 Mr. Marte.

18 MR. BONGIORNI: Sure. Absolutely.

19 THE COURT: He is versed -- he has personal knowledge  
20 or collective knowledge, you know, gained by interactions with  
21 other agents who worked on the investigation of Mr. Marte. He  
22 has personal knowledge in that regard or collective knowledge  
23 with respect to the process that was followed in the  
24 investigation of Mr. Marte, and the points at which he obtained  
25 evidence or information that he included in the affidavit in

1 support of the Title 3 application.

2 MR. BONGIORNI: Absolutely, and I don't question that.

3 THE COURT: Right. Okay.

4 MR. BONGIORNI: But the real issue here is we made a  
5 claim that we believe the investigation in the Dominican  
6 Republic that gave rise to the wiretap wasn't solely and  
7 exclusively a Dominican Republic invention or initiation, and  
8 that the United States Government was involved in it, and that  
9 there is evidence out there of the joint nature of that  
10 investigation.

11 The problem with conducting a hearing in this regard  
12 is that all of the questions that could be asked, Agent Barron  
13 didn't ask. He asked closed-end questions, did this happen,  
14 did that happen, and that's simply insufficient, because as we  
15 know, there are a whole host of other things that go on in  
16 these investigations to which either he wasn't privy to or he  
17 didn't ask the questions to find out the answers to.

18 So that's our --

19 THE COURT: That's a position.

20 MR. BONGIORNI: That's our position and --

21 THE COURT: So the argument, essentially -- I just  
22 want to make sure I understand it.

23 MR. BONGIORNI: Sure.

24 THE COURT: The argument is that the investigation  
25 into Sergio Gomez Diaz, your contention is that the

1 investigation in the Dominican Republic into Sergio Gomez Diaz,  
2 that that was a joint -- that may have been a joint  
3 investigation, and if that was a joint investigation, then you  
4 would be entitled on that basis to information related to the  
5 initiation of the wiretaps in the Dominican Republic of Sergio  
6 Gomez Diaz.

7 Is that correct?

8 MR. BONGIORNI: Yes, and that's because without that,  
9 if that was the case, then Mr. Perez would be entitled to  
10 challenge that communication in an American court.

11 THE COURT: Mr. Perez was not intercepted.

12 MR. BONGIORNI: Well, I'm not sure that  
13 Mr. Perez was -- I'm not conceding that Mr. Perez was not  
14 intercepted because while the Government provided me with a  
15 copy, it did not provide me a copy of a return that would show  
16 who the people were who were intercepted. The only reason we  
17 became aware of it is because the two conversations that were  
18 intercepted of Mr. Marte that occurred, I think, on two days --

19 THE COURT: But those are not included. In other  
20 words, there was no -- the affidavit in support of the  
21 application to intercept Mr. Marte's communications does not  
22 rely to any extent on any interception of Mr. Perez on the  
23 Dominican wiretap.

24 MR. BONGIORNI: No, it does not.

25 THE COURT: Okay.



1 MR. BONGIORNI: I just don't -- I just can't be sure  
2 whether or not Mr. Perez was intercepted or not because I don't  
3 have a return.

4 THE COURT: But what you're looking for is --

5 MR. BONGIORNI: What I'm asking the Court to do --

6 THE COURT: Okay. That it seems fairly far aloof, but  
7 go on.

8 MR. BONGIORNI: Is that the process employed here is  
9 insufficient to be able to determine whether or not there was a  
10 joint investigation.

11 So on behalf of Mr. Perez, every part of the hearsay  
12 that Mr. Barron testified to, I would move to strike, and based  
13 on if the Court would allow that motion, based on what's left,  
14 it's really an insufficient record to say that there was no  
15 evidence of joint venture, because the real evidence of joint  
16 venture was never explored, was never gone into, and that, I  
17 think, is as succinctly as I can put it.

18 THE COURT: Okay. Mr. O'Donnell?

19 MR. O'DONALD: I have nothing else to add.

20 THE COURT: You have nothing to add to that?

21 MR. O'DONALD: Thank you.

22 THE COURT: Alright. Mr. Desroches?

23 MR. DESROCHES: Thank you.

24 Your Honor, I would suggest that the defendant's  
25 belief that the investigation that occurred in the

1 Dominican Republic in 2015 was somehow guided or influenced by  
2 American authorities is abject speculation. It's not supported  
3 by anything in the record. The defendant can point to nothing  
4 in the hundreds of pages of affidavits that they're in  
5 possession of. There's nothing that supports that assertion in  
6 the Dominican orders that they've been provided showing that  
7 these were judicially-authorized wiretaps. There's nothing  
8 there except their stated belief that there was some  
9 involvement.

10 I would suggest to you what Special Agent Barron  
11 testified to day were the results of his diligent investigation  
12 into answering this Court's questions. He selected the people  
13 who may be involved who he believed would have the answers.  
14 Division Counsel for DEA did the same for her counterparts and  
15 they found that there was no involvement in the investigation.  
16 Specifically, in pointing to the actors raised in Valdivia,  
17 very importantly in this case I would suggest is the initiation  
18 of the Dominican investigation occurring more than a year prior  
19 to the investigation into Mr. Marte, and well before the  
20 New York Division's investigation into an associate of  
21 Sergio Gomez Diaz, and based on an event that occurred, the  
22 seizure of the plane. That was completely independent of  
23 American intervention or American information.

24 Therefore, this investigation was organic to the  
25 Dominican Republic, existed for well over a year prior to the

1 investigation of Mr. Marte. There's no evidence whatsoever  
2 that the DEA or any American authority was involved in either  
3 investigation directing the wiretap. In fact, you heard that  
4 the order was applied for in January 2015 by Dominican  
5 authorities. I have no urging of this of the American  
6 authorities, and that was true throughout the course of the  
7 investigation.

8 To the extent that there was communication between  
9 Dominican authorities and American authorities is simply  
10 information sharing. As Agent Barron testified to, that  
11 occurred at the SOD in order to deconflict, make sure that  
12 people weren't getting in each other's ways.

13 Therefore, your Honor, I would suggest that much of  
14 the testimony, yes, was based on hearsay, but necessarily it is  
15 within this Court's discretion to accept that testimony. As  
16 you heard, this was -- there's no, I would suggest, one person  
17 to answer these questions, and I believe the agent testified  
18 credibly when he said that these are the people he believed  
19 would have the answers.

20 The defendant, even if -- and as I've argued  
21 previously, if the defendant were able to make any showing, it  
22 is their burden, and I'd suggest there hasn't been any showing.  
23 But even if they were, it will then make some showing  
24 whatsoever. This is, as your Honor noted, very far removed  
25 from anything that's material in this case. It's as if they

1 want the -- they're arresting in their proposition that if the  
2 DEA was involved in an investigation, then we get everything  
3 that happened in the Dominican Republic without considering  
4 materiality, which is the next step.

5 I would suggest, your Honor, because there's no  
6 evidence of a joint investigation, particularly pointing to the  
7 actors in Valdivia, that this defense motion should be denied,  
8 and I would ask the Court to do so.

9 THE COURT: Okay. Anything further, Mr. Bongiorno?

10 MR. BONGIORNI: Only that I dispute that it was our  
11 burden. I brought the motion originally because I said if the  
12 information exists, it's exculpatory, and because under the  
13 local rule which really broadens Brady. So the burden is on  
14 the Government to produce it.

15 THE COURT: I think the cases pretty clearly say that  
16 the burden is on the defendant to make a showing.

17 MR. BONGIORNI: Well, I don't know if anybody  
18 specifically, as we did, said if you look at the local rule,  
19 and by extension, it's exculpatory if it casts doubt on the  
20 admissibility of evidence, and if this in fact was a joint  
21 investigation, then to that extent it does.

22 But I'll wait for the Court's ruling. I appreciate  
23 the fact that we had an evidentiary hearing.

24 THE COURT: Okay.

25 MR. BONGIORNI: As I said, I still believe that this

1 falls far short of the best way to ascertain the facts in this  
2 case.

3 THE COURT: What would you have suggested was the best  
4 was to ascertain the facts in this case?

5 MR. BONGIORNI: I think that part of the burden should  
6 have been on the Government to produce live witnesses subject  
7 to cross-examination.

8 THE COURT: Alright. Anything else?

9 MR. BONGIORNI: Or to at least make a search for  
10 documentary evidence that would -- in terms of financing and  
11 things like that.

12 THE COURT: Alright. Anything else?

13 MR. O'DONALD: No, your Honor.

14 THE COURT: Thank you.

15 MR. O'DONALD: Thank you, your Honor.

16 THE COURT: Alright. Thank you.

17 So, Mr. O'Donald, let me just talk to you briefly at  
18 sidebar.

19

20 (End of unsealed portion of hearing.)

21

22

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24

25

C E R T I F I C A T I O N

I, Karen M. Aveyard, Approved Federal Court Transcriber, do hereby certify that the foregoing transcript, consisting of 61 pages, is a correct transcript prepared to the best of my skill, knowledge and ability from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Karen M. Aveyard

Karen M. Aveyard

August 28, 2018

Date